Enhanced Farmland Preservation Initiatives Fall 2005

Purpose:

To develop a new mechanism that will enhance the farmland preservation programs and initiatives offered to the County's rural landowners. This new initiative will focus on specific ways to encourage the preservation of farmland owned by individuals that have decided, for a variety of reasons, to not protect or encumber their farms through the easement programs that are currently available. To accomplish this objective, this new initiative must carefully evaluate all of the specific reasons for non-participation in our existing preservation programs and attempt to address them by either creating a new program and/or modifying existing programs. In this way, the County will better address the needs of rural landowners and simultaneously work towards completion of the 70,000 acres Farmland preservation goal by the year 2010.

Introduction:

2005 represents the 25th Anniversary of the County's Agricultural Reserve as the Functional Master Plan for the Preservation of Agriculture and Rural Open Space was published in October 1980. Over the past 25 years, the County has achieved national recognition in the number of acres protected through various easement programs. At present, the County has 65,000 acres encumbered by these easements and this acreage represents over 93% of the farmland preservation goal of preserving 70,000 acres by the year 2010. The remaining 4,500 acres or 7% has proven to be the most difficult and the most expensive properties to protect and, therefore, enhanced Farmland Preservation initiatives are recommended as we look beyond the silver anniversary of the Ag. Reserve.

Background:

The Rural Density Transfer Zone represents one of the most successful agricultural zones in the Country. The Agricultural Reserve, as it is most commonly called, is truly a precious and valuable resource that all citizens can appreciate and enjoy. This Agricultural Reserve provides many environmental and economic benefits to the County as well as enhancing the quality of life for residents through the amenities of rural open space and the availability of fresh locally grown agricultural products. Montgomery County is fortunate to have an extensive farmland preservation "tool box" or public policy which encompasses seven easement programs as follows:

- Montgomery County Agricultural Easement Program (AEP)
- Maryland Agricultural Land Preservation Foundation (MALPF)
- Maryland Environmental Trust (MET)
- Montgomery County Rural Legacy Program (RLP)
- Montgomery County Transfer of Development Rights Program (TDRs)
- Legacy Open Space (LOS)
- Conservation Reserve Enhancement Program (CREP)

Each of these easement programs are specifically designed to target certain properties and meet the diverse needs of landowners. The success of our preservation programs is a tribute to commitment of landowners and their stewardship in voluntarily protecting their farms.

Suggestions from the farmers:

During the summer and fall, several agricultural organizations have discussed the escalating real estate values of rural land transferring in the market and they are suggesting that a new approach for farmland preservation participation may be needed in view of these trends. These discussions have contributed to the Department of Economic Development Agricultural Services Division laying a foundation for this new approach and outline exactly how it would work. The challenge for staff is to develop a strategy and specific programmatic procedures that will be conducive to the programs already in place or perhaps modify them altogether to improve their effectiveness.

The increasing fair market values of farmland in Montgomery is well documented over the past 25 years. In 1980, the Ag. Reserve Master Plan stated that growing values of farmland were making it difficult for farmers to purchase land for farming. While this situation also holds true today-the average fair market value of farmland has continued to increase from $3,500 per acre in 1980 to over $10,000 per acre in 2005. As this trend continues to grow, it provides opportunities to landowners in appreciating the equity they have in the land by selling the farm for development. This factor represents a realization whereby the farmer's most valuable and most important asset is the farmland itself. The County Government approved the Legislative Act of January 6, 1981 which created the RDT Zone including the ability for landowners to develop their properties at a density of one house per twenty-five acres. This density represents the foundation for determining the equity in the land. And while this RDT Zone has been extremely effective since 1980 in reducing the level of residential development in the rural regions of the County, there are a growing number of residents that are objecting to this permissible density as authorized in accordance with the zoning laws of the County Code. In view of the growing concerns voiced by rural residents coupled with the increasing demand and fair market values of farmland in the County, a new approach/proposed program has emerged.

Suggested names for the proposed program:

Outlined below, you will see a comprehensive list of suggested names for this proposed program that is provided in an attempt to avoid confusion because there are multiple names being discussed for this proposed program.

Suggested Names for the Proposed Program

- 5th TDR Program
- Super TDR Program (STP)
- Building Lot Termination (BLT)
- Roof Top Elimination Program (REP)
- Development TDR Program (DTP)

No matter what the proposed program is ultimately called, the above suggested names all share one common theme that needs to be explained in detail. When the Agricultural Reserve was created in January 6, 1981, the Rural Density Transfer (RDT) Zone was simultaneously adopted. This RDT Zone mandated the following:

1. For every five (5) acres of RDT zoned land, one (1) Transferable Development Right (TDR) was allotted.
2. Houses could be built at a density of 1:25 acres
3. A TDR must be retained with the property for all existing and future houses (Farm Tenant dwellings excluded)

Example of a 25 acre farm in the RDT Zone

1. 25 acres yields (1 TDR per 5 acres)	5TDRs
2. 4 "Excess TDRs" that can be serialized, created, transferred, sold	4TDRs
3. 1 retained "Super TDR" for 1 house permitted by zoning	1TDR

For the 25 acre example, the "5th or Super TDR" is retained with the property enabling the landowner to construct the house permissible under the density of the RDT Zone. This retained or "Super TDR" is valued differently because it equates to the house that can be built or developed on the property as compared to the four (4) "Excess TDRs" - whose value is determined by negotiations between developer and landowner and not tied directly to the value of an actual development right. These "Excess TDRs" can be serialized, created, transferred and sold to developers for use in down county TDR receiving areas. Understanding the difference in valuing the "5th or Super TDR" from the "Excess or transferable TDR" is paramount in developing procedures and fair compensation for the proposed program.

Range of Current Values of TDRs

Type of TDR	**Explanation**	**Range of Fair Market Values**
• "5th or Super TDR"	Retained TDR for house on farm	\$175,000-\$500,000/Dev. Right
• "Excess TDR"	"Excess TDR" that is serialized, created & sold to developer	\$ 37,500-\$ 41,000/TDR

It should be recognized that as we approach our goal of protecting 70,000 acres of farmland, it will become more difficult to preserve the unprotected lands that remain. The land we have protected thus far has become extremely attractive and valuable for surrounding land that still can be developed. Developers and real estate agents use protected lands as another selling amenity that adds value to an unprotected property and encourages rural landowners to pursue development options. Rising real estate values and the demand for building units in down county areas has required staff to examine current methods for the valuation of farmland for agricultural preservation easements and to make recommendations for new farmland protection initiatives and enhancements. Enhancements include bi-annual reviews of the Agricultural Easement Formula to ensure easements provide fair and equitable compensation for farmers.

How will the proposed program work?

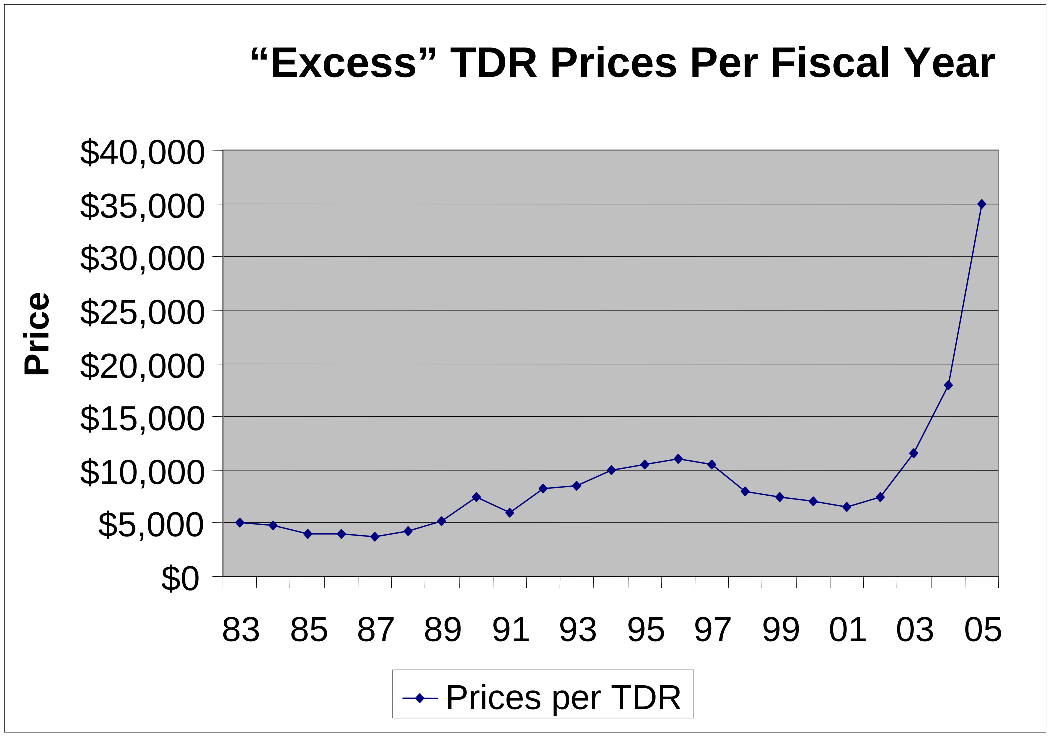
The proposed "Building Lot Termination" program (BLT) will involve a public/private sector investment. The program would be to evaluate the development options available in the agricultural reserve. Staff would negotiate with private landowners to value each building/development right which is permissible under zoning for the purpose of eliminating all or some of the permitted density. In exchange for eliminating density, the landowner would receive compensation for each development right or "Super TDR" eliminated. The County would benefit by additional easements at a time where real estate values have risen dramatically which has impeded progress with traditional programs. This in turn will help to provide greater protection of agricultural lands and help us meet our 70,000 acre preservation goal by 2010.

Funds provided by the public sector will come from the Agricultural Preservation Capital Improvement Program wherein $14 million will be appropriated over FY 2007 and 2008 for the purchase of "Super TDRs." This approach will represent the initial phase of the BLT program where the County Government will purchase "Super TDRs" with the intent of reselling them to developers in the future once the County creates the new TDR receiving areas for commercial, mixed use, and R/D development. During this initial phase of the BLT, the County will serve as a facilitator in the purchase of "Super TDRs" that will eventually be used for Commercial Development Rights (CDRs) to be applied in any zone and provide a density over-ride of 10%. Funds provided by the private sector will initially come from developers purchasing "Super TDRs" from the County Government. The proceeds will go back to the Agricultural Preservation CIP program thereby serving as a revolving fund for purchasing more "Super TDRs." The County will turn the purchase of "Super TDRs" over to the private sector-developers to purchase them directly from landowners, once the program procedures and recording documents are fully understood by everyone.

For this approach to be viable, the County will need to develop new TDR receiving capacity within master plans and explore new uses for TDRs outside of the residential zones.

Understanding TDR prices:

Over the history of the TDR Program, the value of "Excess TDRs" has fluctuated widely as outlined below:



Until recently (2003), the farmers have stated that proceeds from the sale of TDRs did not adequately compensate them for the lost equity resulted from the 1981 Down Zoning. As the prices for TDRs have approached $40,000/TDR, the farmers are saying this is where the TDR prices should have been all along and the County has been too slow in creating the necessary demand for TDRs through new TDR receiving capacity. At present, the MNCPPC has determined that 2,122 TDRs are remaining available for transfer from the sending area and that total TDR receiving capacity is 2,046. On the surface, these numbers create a false sense of security because the designated TDR receiving capacity on specific sites is often lost for many reasons and this diminished TDR capacity ranges from 30-40%. Considering this factor of diminished TDR capacity, means that only 1,227 TDRs may actually materialize and therefore, another 895 TDRs will be needed in new TDR receiving capacity. It is also important to note that when the 183 acre Crown farm is annexed into the City of Gaithersburg, another 300 TDR’s in receiving capacity will also be lost and we will need to make up this lost capacity somewhere else.

If the County Government supports this proposed BLT program in reducing the number of residences in the Agricultural Reserve, we must be more aggressive in approving additional TDR receiving areas for residential development as well as change the TDR program in using TDRs in other zones such as commercial, industrial or R/D zones.

The MNCPPC reports that approximately 1,800 additional houses will be constructed in the Agricultural Reserve over the next 30 years and many residents want to see this number of potential houses reduced.

Based on MNCPPC most recent TDR data, there are approximately 2,500 TDRs that were deducted from the overall maximum number of TDRs available for transfer from the sending area to receiving areas because these TDRs are retained with the properties in view that 1 house per 25 acres will most likely be built at some point. The DED recommends that the BLT Program could reduce this number of residences through the purchase of “Super TDRs” by at least 20%. This will result in an additional 500 “Super TDRs” that will need to be created for new CDR receiving areas involving various types of commercial, industrial and R/D zones.

(2,500 “Super TDRs” @ 1/25x20%=500 “Super TDRs”)

<u>How can a compensation mechanism be developed to address the difference value of Excess TDRs @ $40,000 and “Super TDRs” @ $400,000? Furthermore, how can the current TDR market pricing structure be modified to develop the higher TDR values needed to encourage the reduction of residential roof tops in the Ag. Reserve?</u>

The answer to these questions must be addressed as part of the amendments to the Executive Regulations No. 66-91 which govern the County Government in the use of public funds for purchasing agricultural preservation easements. The Department of Economic Development and the Agricultural Preservation Advisory Board recommends these regulations need to be amended to incorporate the BLT program.

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